IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 2326 of 2004(B)

PETITIONER:

M.P.ABDURAHIMAN HAJI, AGED 45 YEARS
S/O.VALIYUNNI, ALEENKANDI HOUSE,
KUZHIMANNA, PALAKKAD P.O.,
MALAPPURAM.

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

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1. ARATHY, REP. BY MOTHER GUARDIAN SREEJA,
D/O.KANNAN, KARIYATHAN KOTTAMMAL HOUSE,
OLAVATOOR.P.O., MALAPPURAM DISTRICT.

2. KALATHINGAL ABDUL NAZAR,
S/O.KUNHIMUHAMMED HAJI, PANDIYALAKANDI HOUSE,
OLAVATOOR.P.O., MALAPPURAM DISTRICT
(DRIVER, KEZ 841 JEEP)

3. UNITED INIDA INSURANCE COMPANY
LIMITED, MANJERI. (INSURER KEZ 841 JEEP)

BY ADV. SRI.BABU S. NAIR FOR R2
SRI. P.SAMSUDIN FOR R1
SRI. A.R. GEORGE FOR R3.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/07/2007, ALONG WITH W.P.(C).2448 OF 2004, W.P.(C).2467 OF 2004 AND W.P.(C). 2518 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: MEDICAL CERTIFICATE DTD. 10.11.2003.

EXT.P2: SALE AGREEMENT DTD. 16.4.1998.

EXT.P3: COMMON AWARD IN O.P.(M.V)NO.1663/98 DTD. 4.4.03.

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RESPONDENT'S EXHIBITS: NIL

// TRUE COPY//

PIUS C. KURIAKOSE, J.

W.P.(C) NOs. 2326,2448,2467,2518/2004

Dated this the 26th day of July , 2007

JUDGMENT

Invoking the supervisory jurisdiction of this court under Article 227 and also under Article 226 of the Constitution the petitioner, who was the second respondent before the Motor Accident Claims Tribunal, Manjeri, has filed these writ petitions seeking to set aside Ext.P3 common award passed by the Motor Accident Claims Tribunal in 10 claim petitions arising out of the motor accidents involving jeep of which the petitioner is the registered owner.

2. Heard Sri.T.K.Ajith Kumar, the learned counsel for the petitioner, Sri.Babu S.Nair, the learned counsel for the 2nd respondent and Sri.A.R.George the learned counsel for the 3rd respondent Insurance Company. The contours of this court's jurisdiction under Article 227 are well known. Having gone through Ext.P3, it is not possible to say that Ext.P3 order is vitiated to the extent of warranting corrections under the above

jurisdiction which is exceptional. The para meters for exercising jurisdiction under Article 226 on judicial orders are also practically the same as those applicable to supervisory jurisdiction.

2. The case of the petitioner is that he had just one month prior to the accident transferred the ownership and possession of the jeep in question to the 2nd respondent and that it was the obligation of the 2nd respondent to have submitted the sale letters, which had already been issued by him to the 2nd respondent along with the agreement, before the authorities under the Motor Vehicles Act and facilitated mutation of entries in the register. The petitioner complains that the 2nd respondent, who was under the obligation to appraise the MACT of the true facts, willfully refrained from doing so which resulted in Ext.P3 common award. The learned counsel would submit that the 2nd respondent had assured the petitioner even after the petitioner had received notice from the MACT that whatever is necessary will be done by the 2nd respondent so that the petitioner will be absolved from the liabilities under the pclaims. I am not impressed by the above submission. Admittedly, the petitioner

received notice from the MACT directing him to enter appearance before the MACT. On his own volition, he opted not to appear before the MACT. Concededly he is the registered owner and ownership has not changed. The issue regarding the maintainability of the writ petition whether under Articles 226 or 227 of the Constitution on a facts situation like the present one, is squarely covered by the decision of the Supreme Court in **Sadhana Lodh v. National Insurance Co.Ltd. and another (AIR 2003 SC 1561)** , Full Bench of the Andhra Pradesh High Court in **National Insurance Co. Ltd. v. Shrikant Vinod Tiwari (2007 (3) KLT SN 10 (A.P.)** and Division Bench of this court in **Ashraf v. Fthima (2004 (2) KlT 598)**.

The challenge against the impugned order fails. Accordingly, the writ petition is dismissed.

PIUS C. KURIAKOSE,
JUDGE.

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